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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT  
DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

EDDIE SAMANIEGO,

Defendant and Appellant.

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B290911

(Los Angeles County  
Super. Ct. No. YA089718)

APPEAL from a judgment of the Superior Court of Los Angeles County. Edmund Willcox Clarke, Jr., Judge. Affirmed.

Vanessa Place, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Scott A. Taryle and Rene Judkiewicz, Deputy Attorneys General, for Plaintiff and Respondent.

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A jury convicted Eddie Samaniego of four counts of committing a lewd act on a child under the age of 14. He was sentenced to 70 years to life. On appeal, he raises two arguments: (1) the trial court erred in admitting evidence of sexually suggestive photographs and websites accessed on his computer, and (2) his counsel provided ineffective assistance when she delivered the closing argument. We disagree and affirm.

***FACTUAL AND PROCEDURAL BACKGROUND***

1. *Amanda B. and Janelle B.*

In approximately 2000, Amanda B. and Janelle B. attended a child's birthday party at Samaniego's house. Amanda was between seven and nine years old at the time; Janelle was seven. Amanda and Janelle stayed overnight, sharing the lower bunk bed. During the night, Amanda woke up to discover that her pajama pants and underwear had been pulled down. Samaniego was touching her vagina with his fingers. Samaniego then pulled her clothes up and left the room. Amanda told an adult relative that she wanted to go home.

Janelle also woke up during the night to see Samaniego entering the room. Amanda was no longer there. Samaniego turned on the television and put on a pornographic video. He laid down next to Janelle, pulled down her shorts and underwear, and touched her vagina. He pulled his penis out, stroked it, and asked her if she wanted to touch it. She said no. He then turned the television off and left the room.

2. *Suzette A.*

In between 2002 and 2004, Suzette A. went to a child's birthday party at a relative's house. Suzette was between eight and ten years old at the time. After the party, Suzette spent the

night at the house of Samaniego, her uncle. During the night, she woke up to see Samaniego entering the room. He lay down behind her, kissed her neck, caressed her hair, and rubbed her vagina with his hand. Suzette told him to stop, and he put his hand over her mouth. Eventually, he left the room.

3. *Veronica J.*

In 2006, Samaniego was dating Veronica's mother. Veronica was 13 years old. One night, Veronica went to sleep on the floor of her mother's bedroom, while Samaniego and her mother were asleep on the bed. Veronica awoke during the night to discover her boxer shorts had been pulled down to her feet. Samaniego was orally copulating her. He put her hand on his penis which was wet. She got up and ran out of the house. She ran a mile and a half in her socks to a payphone and called 9-1-1.

Samaniego was arrested. Veronica underwent a Sexual Assault Response Team (SART) exam. The samples from the SART exam were sent to a lab for DNA analysis. In the meanwhile, Samaniego went to prison for violating parole. When he was released from prison in 2007, the lab had not yet processed the samples. The lab eventually processed some of the material in 2009 and found male DNA.<sup>1</sup> The samples would undergo further testing in 2015.

4. *Erika F.*

In 2013, Erika F. went to a family party at the house of Samaniego, her great-uncle. Erika was eight years old at the time. She was playing in the living room when he picked her up and put her over his shoulder. He carried her into a bedroom, laid her down on the bed, and locked the door. He tickled her and

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<sup>1</sup> In 2009, the Sheriff's Department contracted with the lab to process their backlogged sexual assault kits.

said, “I love you.” She told him to stop. He stopped, and then started tickling her again while touching her on her buttocks and vagina. She told him to get off and started kicking him. She then unlocked the door and ran out of the room. Erika told her grandmother about the assault. The following day, Erika spoke with a police officer.

5. *The Charges*

In 2014, Samaniego was charged with four counts of committing a lewd act on a child (Pen. Code, § 288, subd. (a))<sup>2</sup> based on his molestations of Janelle, Suzette, Veronica, and Erika.<sup>3</sup> He pled not guilty. Trial took place in 2018. The victims either testified or their testimony was read into the record per counsel’s stipulation. Their accounts of the molestations were consistent with what they had represented to the police.

6. *Computer Evidence at Trial*

In 2014, shortly after Erika spoke with the police, the police executed a search warrant at Samaniego’s home. They seized a computer laptop from his bedroom. A forensic examination of the computer’s hard drive revealed a directory dated 2013 containing photographs of young girls posing in a sexual manner. In 2013 and 2014, the computer had accessed websites about young girls and sex under the username “Eddie.” The photographs and websites were admitted into evidence for the limited purpose of showing Samaniego’s intent to violate

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<sup>2</sup> All further statutory references are to the Penal Code unless otherwise mentioned.

<sup>3</sup> The prosecution did not charge Samaniego with Amanda’s molestation.

section 288, and his consciousness of guilt given that he had informed the detective he had not downloaded the images.

7. *DNA Evidence at Trial*

In 2015, the lab did further testing on the samples taken during Veronica's SART exam. Veronica's boxers and tee-shirt tested positive for semen. Defendant's DNA matched the profile found on the boxers and on the vaginal swab. The DNA results from the vaginal swab were consistent with Samaniego's mouth having had contact with Veronica's vagina.

8. *Samaniego's Testimony*

Samaniego took the stand at trial. He confirmed the accuracy of many details testified to by the victims; he disputed, however, that he had molested them. He claimed that his DNA was on the vaginal swab taken from Veronica because she had been wearing his boxer shorts. He posited that Veronica had taken his "dirty clothes that had [his] semen on them and put them on." The prosecutor impeached him with his prior statement to the police stating there was "no way" his DNA would be found on Veronica's clothing or body.

Defendant acknowledged that the computer confiscated by the police belonged to him, and that his username was "Eddie." However, he denied that he had downloaded the images submitted into evidence.

He was impeached with his convictions for felony stalking of his former girlfriend in 2005, and felony assault on his sister's daughter in 2009.

9. *Judgment*

The jury deliberated approximately half an hour before finding Samaniego guilty of all charges. The court sentenced him to 70 years to life comprised of 25 years to life on count 1, and

consecutive 15-year life terms on the other counts. He timely appealed.

### ***DISCUSSION***

1. *The Admission of Sexually Suggestive Photos and Websites*

Samaniego contends that the images and websites taken from his computer should not have been admitted into evidence because they were not relevant to show intent. He also argues that any probative value was substantially outweighed by the prejudicial effect of this evidence. We conclude the images and websites were admissible under Evidence Code section 1101, subdivision (b) to show Samaniego's intent to molest young girls in violation of section 288. We further find the court did not abuse its discretion in admitting these images under Evidence Code section 352.

A. *Proceedings in the Trial Court*

The prosecution moved to admit images and websites from Samaniego's computer for the purpose of proving his sexual intent in committing the charged crimes. The photographs were of young girls posed in a sexual manner; the websites had explicit titles such as "underageteengirlmasturbation." Defense counsel objected on the ground that the "overwhelming evidence regarding motive and intent . . . would make [the admission of] these images . . . cumulative and overly prejudicial under Evidence Code section 352."

The trial court admitted the evidence, finding that the images were relevant to show "that a person who would look at these images and preserve these images is more likely to harbor the prohibited intent, . . . required under section 288, . . . than the general population." In weighing the prejudicial impact against the probative value of the evidence, the court concluded that "the

People should be allowed to use the images, and also certain evidence about websites, to show not only a greater probability that [Samaniego] harbored the criminal intent but also that he gave false information to the police, showing consciousness of guilt.”

The court later instructed the jury that “certain evidence was admitted for a limited purpose,” and they could “consider that evidence only for that purpose.” The jury was further instructed they could “not consider the images or the websites as evidence that [Samaniego] is a person of bad character or that he had a predisposition to engage in a certain type of conduct. It was not illegal to access the websites. Nor was viewing or possessing the images unlawful.”

B. *The Court Did Not Err in Admitting the Photos Found on Samaniego’s Computer*

In general, evidence of specific instances of a person’s conduct is inadmissible when offered to prove his conduct on a specified occasion. (Evid. Code, § 1101, subd. (a).) Such evidence may, however, be admitted to prove motive or intent. (*Id.*, subd. (b).) “In certain circumstances, evidence of sexual images possessed by a defendant has been held admissible to prove his or her intent.” (*People v. Page* (2008) 44 Cal.4th 1, 40.) We review the admission of evidence under Evidence Code section 1101 for an abuse of discretion. (*People v. Daniels* (1991) 52 Cal.3d 815, 856.)

Samaniego first argues that the photographs and websites were inadmissible because they did not qualify as “bad acts” under Evidence Code subdivision (b). This argument is without merit. Sexually explicit photographs of prepubescent and young adults are admissible to show intent to molest a child in violation

of section 288. (*People v. Memro* (1995) 11 Cal.4th 786, 865 (*Memro*).)

Samaniego also argues that the images and websites were not relevant because he downloaded the images after the charged crimes took place. In essence, Samaniego is arguing that while the evidence may show he had a sexual interest in young girls at the time the images were accessed, there is no reasonable inference he possessed this interest beforehand. We disagree. We conclude that a reasonable inference could be made that Samaniego's pedophilic interests were long-term. (See *People v. Balcom* (1994) 7 Cal.4th 414, 425 [evidence of uncharged offenses that is relevant on the question of intent is admissible whether the other offenses were prior or subsequent to the date of the charged offense].)

Samaniego next argues that the evidence was "irrelevant because intent was not at issue here" given that his conduct was unambiguously lewd.<sup>4</sup> He cites to *People v. Haslouer* (1978) 79 Cal.App.3d 818, 829 (*Haslouer*) for the proposition that sexual images may not be admitted when there is "nothing ambivalent about the defendant's described acts."

*Haslouer* is not on point. In that case, a victim's testimony was properly admitted as evidence of a prior similar act.

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<sup>4</sup> This argument is contrary to the approach his counsel took at trial with respect to Erika. Defense counsel's cross-examination of Erika attempted to characterize the abuse as a misunderstood attempt by Samaniego to be playful with his great-niece. Counsel repeatedly asked Erika if she and Samaniego were laughing; counsel asked if Erika was having "fun" when Samaniego tickled her; and counsel suggested that Samaniego's hand "touched in the area of" Erika's vagina as a result of Erika "squirming" to avoid his hands.



(*Haslouer, supra*, 79 Cal.App.3d at pp. 828–829.) The Court of Appeal further held that the trial court erred in instructing the jury that this evidence was “admitted on the question of intent” when “[a]ll parties conceded that intent was not an issue.” (*Id.* at p. 829.) The *Haslouer* court did not hold, as Samaniego claims, that evidence of prior acts may not be admitted when a defendant’s conduct is unambiguously lewd. By contrast, the Supreme Court in *Memro* held that a defendant’s intent to violate section 288 is put at issue within the meaning of Evidence Code section 1101 when he pleads not guilty to the crimes charged. (*Memro, supra*, 11 Cal.4th at p. 864.)

We also observe that the trial court admitted this evidence based on the alternate ground that it showed Samaniego’s consciousness of guilt. Samaniego has not challenged this decision on appeal, and has therefore not met his burden of showing the court erred in admitting this evidence.

Lastly, Samaniego contends the images and websites were substantially more prejudicial than probative, and therefore, barred by Evidence Code section 352. We find no abuse of discretion. The sexually suggestive photos and websites accessed by Samaniego constituted evidence that he had a sexual attraction to young girls. One of the offenses actually involved Samaniego showing a pornographic video to a victim before molesting her. The challenged evidence was therefore probative to establishing his intent to violate 288.

The images, which were downloaded from websites with sexually provocative titles, depicted clothed young girls by themselves in sexually suggestive poses. This evidence was less inflammatory than the charged offenses which involved Samaniego removing the victims’ clothes in several instances

and/or sexually assaulting them over their protests. The trial court was reasonable in concluding that the evidence's probative value substantially outweighed the potential to cause prejudice.

2. *Ineffective Assistance of Counsel*

Samaniego contends that his trial counsel was ineffective because her closing argument did not address any of the evidence or critically analyze the prosecution's case. Respondent argues Samaniego has failed to establish that defense counsel had no rational, tactical purpose for her closing argument. We agree with respondent.

A. *Proceedings in the Trial Court*

The record of the trial court proceedings shows defense counsel vigorously advocating for Samaniego throughout trial. She extensively cross-examined the witnesses, and persistently raised objections. At the end of the prosecution case, she advised her client not to testify. In an ex parte proceedings, she explained that by taking the stand he would open the door to cross-examination on his past felonies as well as incriminating statements he had made to the police. She further explained that the "things that he thinks we will be able to prove" were not "relevant issues as to these allegations," such as whether the floor at his house was so dirty that children would not have slept on it.

When Samaniego did take the stand, he confirmed the accuracy of many of the details recounted by the victims. He denied that there was collusion among the girls. He was equivocal in suggesting that Veronica had worn his dirty boxer shorts.<sup>5</sup> The prosecutor then impeached Samaniego with his

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<sup>5</sup> [Prosecutor]: "Do you deny that your semen was on the boxers that Veronica was wearing?"

prior statement to the detective that there was “no way” his DNA would be found on Veronica’s clothing or body.

At a subsequent *Marsden*<sup>6</sup> hearing, defense counsel explained how Samaniego had undermined her defense tactics by adopting an inconsistent approach when he took the stand:

“When [Samaniego] took the witness stand and [] testified that everything those young ladies testified to was true and correct but for the molestations, it literally pulled the rug out from under me. That my only argument in this case, based on everything I know – and it’s a lot of discovery, a lot of research, and a lot of witness interview -- was some sort of argument suggesting to the jury that it was way too coincidental that all these young girls had the same story; there must have been collusion from somewhere. I could only hope to plant a seed of doubt in their mind. When Mr. Samaniego took the witness stand, it foreclosed me from arguing that.”

After the prosecutor gave her closing argument, defense counsel began to address the jury. At that point, Samaniego interrupted her. Over the court’s attempts to stop him, Samaniego told the jury he had been “unfairly represented,” that “they ha[d] heard no defense,” and he had “a lot of evidence they

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[Samaniego]: Yes. Actually, I believe those boxers were mine.

[Prosecutor]: “So . . . you believe that the reason your DNA was inside Veronica’s . . . vagina was because she was wearing your boxers . . .?”

[Samaniego]: “I’m not sure for a fact, but I believe so, yes.”

<sup>6</sup> *People v. Marsden* (1970) 2 Cal.3d 118.

never presented because she doesn't know my case because she never read it or talked to me about it. No fair trial here. I'm looking at life here, four life sentences, your honor, and there's no defense." Shortly thereafter, Samaniego was taken to lockup and refused to return to the courtroom.

Defense counsel then gave her closing argument. She thanked the jury for "being patient and listening to the evidence," reminded them of their duty to be fair and impartial, and instructed them to carefully review the instructions.

B. *Counsel Was Not Ineffective*

"In order to establish a claim of ineffective assistance of counsel, defendant bears the burden of demonstrating, first, that counsel's performance was deficient because it 'fell below an objective standard of reasonableness . . . under prevailing professional norms.' [Citations.]" (*People v. Ledesma* (2006) 39 Cal.4th 641, 745–746.) In evaluating trial counsel's actions, "[a] court must indulge a strong presumption that counsel's acts were within the wide range of reasonable professional assistance." (*People v. Dennis* (1998) 17 Cal.4th 468, 541.) The defendant must also show prejudice, namely that there is a reasonable probability the result of trial would have been more favorable for him or her but for counsel's deficient representation. (*Id.* at p. 540.)

Here, Samaniego argues that defense counsel's closing was constitutionally deficient. Samaniego does not suggest any particular arguments defense counsel should have made in closing but generally argues that she could have delivered "a summation of the defense, [] a precis of the evidence, or a critical analysis of the Government's case." However, reasonably competent counsel could have determined that a summation of

Samaniego's theories of defense—that each of the victims lied about the abuse, although they did not collude and each accurately remembered the other details of their interactions with Samaniego, and that his DNA was found inside Veronica's vagina because she wore his dirty boxers—would not have assisted him because these theories were improbable.

Reasonably competent counsel could have also determined that reminding the jury about Samaniego's inconsistent testimony—such as his ambivalent assertions as to whether Veronica was wearing his boxers—would have actually hurt his case. Lastly, although counsel's earlier statements indicated she intended to present a critical analysis of the prosecution's case casting doubt on the victims' credibility and suggesting collusion, Samaniego prevented her from pursuing this tactic by testifying to the contrary. At that point, reasonably competent counsel may have determined the best strategy was to present a brief closing argument, reminding the jury of its solemn responsibilities and forestalling the prosecution from presenting a persuasive rebuttal. (*Yarborough v. Gentry* (2003) 540 U.S. 1, 7 [the prosecutor “could have exploited” the suggested defense argument during rebuttal argument].)

Thus, reasonable defense counsel could have had multiple legitimate tactical reasons for not summarizing the defense case or critically analyzing the prosecution's theories. Samaniego has failed to demonstrate that counsel rendered constitutionally deficient performance.

Samaniego also cannot show he suffered prejudice from counsel's alleged deficient performance. There was abundant evidence he committed the crimes: forensic evidence of his saliva and semen on Veronica; the victims' testimony that was

consistent with the accounts they gave to the investigating officer; Amanda's corroborating testimony; and Samaniego's own testimony that confirmed the accuracy of the victims' memories from years back, aside from the actual abuse. The prosecution's case was further strengthened by the implausibility of Samaniego's theories: that Veronica had chosen to wear his dirty boxer shorts, and that the victims each independently concocted allegations of sexual abuse. On this record, there is no reasonable probability the result would have been more favorable if defense counsel had delivered a more comprehensive closing argument.

***DISPOSITION***

The judgment is affirmed.

RUBIN, P. J.

WE CONCUR:

BAKER, J.

MOOR, J.